

Appendix

Charles-Louis de Secondat de Montesquieu,

Of the Spirit of the Laws

Book 11

Of the Laws Which Form Political Liberty,
in Its Relation with the Constitution*

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First Chapter. General idea.

1 I distinguish the laws which form political liberty in its relation with the constitution from those which form it in its relation with the citizen. The first will be the subject of this book; I will treat the second in the following book.

Chapter 2. Various meanings given to the word liberty.

1 THERE is no word that has received more different meanings, & that has struck spirits in so many ways, as that of liberty. The ones have taken it for the facility of deposing him to whom they have given a tyrannical power; the others, for the faculty of electing him whom they ought to obey; others, for the right to be armed, & to be able to exercise violence; these, for the privilege of being governed only by a man of their nation, or by their own laws.¹ A certain people have long taken liberty for the custom of wearing a long beard.² These have attached this name to one form of government, & have excluded the other forms from it. Those who have tasted republican government have put it in that government; those who have enjoyed

monarchical government have placed it in monarchy.³ Finally each one has called liberty the government that conformed to his customs or to his inclinations: And since in a republic one does not always have before one's eyes, & in so present a way, the instruments of the ills of which one complains; & since even the laws appear to speak more there, & the executors of the law speak less there; one ordinarily places it in republics, & one has excluded it from monarchies. Finally, since, in democracies, the people appear to do approximately what they want, one has put liberty in these sorts of governments; & one has confused the power of the people with the liberty of the people.

Chapter 3. What liberty is.

1 IT is true that, in democracies, the people appear to do what they want: but political liberty does not consist in doing what one wants. In a state, that is to say in a society where there are laws, liberty can only consist in being able to do what one ought to want, & in not being constrained to do what one ought not to want.

2 It is necessary to put in one's spirit what independence is & what liberty is. Liberty is the right to do everything that the laws permit: & if a citizen could do what they prohibited, he would not have liberty any more, because the others would all have this power likewise.

Chapter 4. Continuation of the same subject.

- 1 DEMOCRACY & aristocracy are not free states by their nature. Political liberty is only found in moderate governments. But it is not always in moderate states. It is only there when one does not abuse power: but it is an eternal experience that every man who has power is carried to abuse it; he goes until he finds limits. Who would say it! virtue itself has need of limits.
- 2 In order for one to be unable to abuse power, it is necessary that, by the disposition of things, power stops power. A constitution can be such that no one will be constrained to do the things to which the law does not oblige him, & not to do those which the law permits him.

Chapter 5. Of the object of the various states.

- 1 THOUGH all states have, in general, one same object, which is to maintain themselves, each state nonetheless has an object which is particular to it. Aggrandizement was the object of Rome; war, that of Lacedaemonia; religion, that of the Judaic laws; commerce, that of Marseille; public tranquillity, that of the laws of China;⁴ navigation, that of the laws of the Rhodians; natural liberty, the object of the politics of savages; in general, the delights of the

prince, that of despotic states; his glory & that of the state, that of monarchies: the independence of each particular is the object of the laws of Poland; & what results from it, the oppression of all.⁵

2 There is also a nation in the world that has political liberty for the direct object of its constitution. We are going to examine the principles on which it founds it. If they are good, liberty will appear there as in a mirror.

3 To discover political liberty in the constitution, not so much trouble is required. If one can see it where it is, if one has found it, why look for it?

Chapter 6. Of the constitution of England.

1 IN each state there are three sorts of powers; the legislative power, the executive power of the things which belong to the right of nations, & the executive power of those which belong to civil right.

2 By the first, the prince or the magistrate makes the laws for a time or forever, & corrects or abrogates those which are made. By the second, he makes peace or war, sends or receives embassies, establishes security, prevents invasions. By the third, he punishes crimes, or judges the differences of particulars. One will call this last the power to judge; & the other simply the executive power of the state.

3 Political liberty, in a citizen, is that tranquillity

of spirit which arises from the opinion that each one has of his security; &, in order for one to have this liberty, the government must be such that one citizen not be able to fear another citizen.

4 When the legislative power is united to the executive power in the same person or in the same body of magistracy, there is no liberty; because one can fear that the same monarch or the same senate might make tyrannical laws to execute them tyrannically.

5 Neither is there any liberty, if the power to judge is not separated from the legislative power & from the executive. If it were joined to the legislative power, the power over the life & the liberty of the citizens would be arbitrary; because the judge would be legislator. If it were joined to the executive power, the judge could have the force of an oppressor.

6 All would be lost if the same man, or the same body of principals, either of the nobles or of the people, were to exercise these three powers: that of making laws, that of executing the public resolutions, & that of judging the crimes or the differences of particulars.

7 In most of the kingdoms of Europe, the government is moderate, because the prince, who has the first two powers, leaves the exercise of the third to his subjects. Among the Turks, where these three powers are united on the head of the sultan, a frightful despotism reigns.

8 In the republics of Italy, where these three powers are

united, liberty is found less than in our monarchies. Also the government needs means as violent as the government of the Turks to maintain itself; as witness the state inquisitors,⁶ & the trunk where every accuser can throw in his accusation with a note, at any moment.

9 See what the situation of a citizen can be in these republics. The same body of magistracy, as executor of the laws, has all the power that it has given itself as legislator. It can ravage the state by its general wills; &, since it also has the power to judge, it can destroy each citizen by its particular wills.

10 All power is one there; &, though there is none of the exterior pomp that exposes a despotic prince, one feels it at every instant.

11 Also, princes who have wanted to make themselves despotic have always begun by uniting all the magistracies in their person; & several kings of Europe, all the great offices of their state.

12 I certainly believe that the pure hereditary aristocracy of the republics of Italy does not precisely come up to the despotism of Asia. The multitude of magistrates sometimes softens the magistracy; not all the nobles always concur in the same designs; various tribunals are formed there that temper each other. Thus, in Venice, the grand council has the legislation; the pregady, the execution; the guarantors, the power to judge. But the evil is that these different tribunals are formed by magistrates

of the same body; which makes not much other than one same power.

13 The power to judge ought not to be given to a permanent senate, but exercised by persons drawn from the body of the people,⁷ at certain times of the year, in the manner prescribed by law, to form a tribunal that lasts only so long as necessity requires it.

14 In this fashion, the power to judge, so terrible among men, being attached neither to a certain state nor to a certain profession, becomes, so to speak, invisible & null. One does not have judges continually before one's eyes; and one fears the magistracy & not the magistrates.

15 It is even necessary, in great accusations, for the criminal, concurrently with the law, to choose judges for himself; or at least for him to be able to take exception to so great a number of them that those who remain are deemed to be of his choice.

16 The other two powers could rather be given to magistrates or to permanent bodies, because they are not exercised on any particular; being, the one, only the general will of the state, & the other, only the execution of that general will.

17 But, if tribunals ought not to be fixed, judgments ought to be, to such a point that they are never anything but a precise text of the law. If they were a particular opinion of the judge, one would be living in society, without knowing precisely the engagements that one contracts

there.

18 It is even necessary that the judges be of the condition of the accused, or his peers, so that he cannot put it into his spirit that he has fallen into the hands of people prone to do him violence.

19 If the legislative power leaves to the executive the right to imprison citizens who can provide bail, there is no more liberty; unless they are arrested to respond without delay to an accusation that the law has made capital: in which case they are really free, because they are submitted only to the power of the law.

20 But, if the legislative power believed itself in danger from some secret conjuration against the state, or some collusion with external enemies, it could, for a short & limited time, permit the executive power to have the suspect citizens arrested, who would only lose their liberty for a time to save it forever.

21 And this is the only means conformable to reason to take the place of the tyrannical magistracy of the ephors, & of the state inquisitors of Venice, who are also despotic.

22 Since, in a free state, every man who is deemed to have a free soul ought to be governed by himself, it would be necessary for the people as a body to have the legislative power: but, since that is impossible in great states, & is subject to many inconveniences in small ones, the people must do by their representatives everything that they cannot do by themselves.

23 One knows the needs of one's own town much better than those of other towns; & one judges the capacity of one's neighbors better than that of one's other compatriots. So the members of the legislative body must not be drawn in general from the body of the nation; but it is suitable that, in each principal place, the inhabitants choose a representative for themselves.

24 The great advantage of representatives is that they are capable of discussing affairs. The people are not at all fit for that; which forms one of the great inconveniences of democracy.

25 It is not necessary for the representatives, who have received a general instruction from those who chose them, to receive a particular one about each affair, as is the practice in the diets of Germany. It is true that, in this way, the word of the deputies would be more the expression of the voice of the nation: but that would throw things into infinite delays, make each deputy the master of all the others; &, on the most pressing occasions, all the force of the nation could be stopped by a caprice.

26 When the deputies, says Mr. Sidney very well, represent a body of people, as in Holland, they ought to render an account to those who have commissioned them: it is another thing when they are deputed by boroughs, as in England.

27 All the citizens, in the various districts, ought to have the right to give their voice to choose the representative; except those who are in such a state of

meanness that they are reputed to have no will of their own.

28 There was a great vice in most of the ancient republics: it was that the people had the right to take active resolutions there, & ones that demand some execution, a thing of which they are entirely incapable. They ought only to enter into government to choose their representatives; which is very much within their ability. For, if there are few people who are familiar with the precise degree of the capacity of men, still each one is capable of knowing, in general, if he whom he chooses is more enlightened than most of the others.

29 The representative body ought not to be chosen to take any active resolution either, a thing that would not be good: but to make laws, or to see if the ones it has made have been well executed, a thing that it can do very well, & that even can only be done well by it.

30 In a state there are always people distinguished by birth, riches, or honors: but if they were mixed in among the people, & if they had only one voice there like the others, the common liberty would be their slavery, & they would have no interest in defending it; because most of the resolutions would be against them. So the part that they have in legislation ought to be proportionate to the other advantages that they have in the state; which will happen if they form a body which has the right to stop the enterprises of the people, as the people have the right to stop theirs.

31 Thus, the legislative power will be entrusted both to the body of nobles, & to the body that will be chosen to represent the people, each one of which will have its assemblies & its deliberations separately, & separate views & interests.

32 Of the three powers of which we have spoken, that of judging is, in some fashion, null. Only two of them remain: &, since they need a ruling power to temper them, the part of the legislative body that is composed of nobles is very fit to produce this effect.

33 The body of nobles ought to be hereditary. It is so first by its nature; & besides, it must have a very great interest in conserving its prerogatives, which are odious by themselves, & which, in a free state, must always be in danger.

34 But, since a hereditary power could be induced to follow its particular interests, & to forget those of the people, it is necessary that in the things where one has a sovereign interest in corrupting it, as in the laws that concern the raising of money, it has a part in legislation only by its faculty of preventing, & not by its faculty of establishing.

35 I call the faculty of establishing the right to order by oneself, or to correct what has been ordered by another. I call the faculty of preventing the right to render null a resolution taken by some other; which was the power of the tribunes of Rome. And, though he who has the faculty of

preventing may also have the right of approving, in that case that approbation is nothing but a declaration that he is not making use of his faculty of preventing, & derives from that faculty.

36 The executive power ought to be in the hands of a monarch; because this part of the government, which almost always has need of momentary action, is better administered by one than by several; whereas what belongs to the legislative power is often better ordered by several than by one alone.

37 If there were no monarch, & the executive power were entrusted to a certain number of persons drawn from the legislative body, there would be no more liberty; because the two powers would be united, the same persons sometimes having, & always being able to have, a share in the one & in the other.

38 If the legislative body were a considerable time without being assembled, there would be no more liberty. For one of two things would happen; either there would be no more legislative resolutions, & the state would fall into anarchy; or these resolutions would be taken by the executive power, & it would become absolute.

39 It would be useless for the legislative body to be always assembled. That would be incommodious to the representatives, & besides would occupy the executive power too much, which would not be thinking of executing, but of defending its prerogatives, & the right it has to execute.

40 Moreover: if the legislative body were continually assembled, it could happen that one would only fill the place of those who died with new deputies: &, in this case, if the legislative body were once corrupted, the evil would be without remedy. When various legislative bodies succeed one another, the people, who have a bad opinion of the present legislative body, reasonably turn their hopes toward the one that will come after: but, if it were always the same body, the people, seeing it once corrupted, would no longer hope for anything from its laws; they would become furious, or they would fall into indolence.

41 The legislative body ought not to assemble itself. For a body is only deemed to have wills when it is assembled; & if it did not assemble unanimously one would not know how to say which part was really the legislative body, that which was assembled, or that which was not. If it had the right to adjourn itself by itself, it could happen that it would never adjourn itself; which would be dangerous in the cases where it wanted to make an attack on the executive power. Besides, there are some times more suitable than others for the assembly of the legislative body: therefore it is necessary that it be the executive power that regulates the time of the holding & of the duration of these assemblies, in relation to the circumstances which it knows.

42 If the executive power does not have the right to stop the enterprises of the legislative body, this body will be despotic; for, since it will be able to give itself all the

power that it can imagine, it will annihilate all other powers.

43 But it is not necessary for the legislative power to have reciprocally the faculty of stopping the executive power. For, execution having its limits by its nature, it is useless to confine it; besides which, the executive power is always exercised over momentary things. And the power of the tribunes of Rome was vicious, in that it stopped not only legislation, but even execution: which caused great evils.

44 But if, in a free state, the legislative power ought not to have the right of stopping the executive power, it has the right, & ought to have the faculty of examining in what manner the laws it has made have been executed; & that is the advantage this government has over that of Crete & of Lacedaemonia, where the cosmoi and the ephors rendered no account of their administration.

45 But, whatever this examination may be, the legislative body ought not to have the power of judging the person, & consequently the conduct of him who executes. His person ought to be sacred; because, being necessary to the state so that the legislative body does not become tyrannical there, from the moment that he should be accused or judged, there would be no more liberty.

46 In this case, the state would not be a monarchy, but an unfree republic. But, since he who executes cannot execute badly without having counsellors who are wicked & who hate

the laws as ministers, though they favor them as men, these counsellors can be investigated & punished. And this is the advantage of this government over that of Cnidus, where the law not permitting the amimones⁸ to be called to judgment, even after their administration,⁹ the people could never have an account rendered of the injustices that one had done them.

47 Though in general the power of judging ought not to be united to any part of the legislative, that is subject to three exceptions, founded on the particular interest of him who ought to be judged.

48 The great are always exposed to envy; & if they were judged by the people, they could be in danger, & would not enjoy the privilege that the least of the citizens in a free state has, to be judged by his peers. So the nobles must be called, not before the ordinary tribunals of the nation, but before that part of the legislative body which is composed of nobles.

49 It could happen that the law, which is at the same time clairvoyant & blind, might be, in certain cases, too rigorous. But the judges of the nation are, as we have said, only the mouth that pronounces the words of the law; inanimate beings who can moderate neither the force of it nor its rigor. So it is the part of the legislative body that we have just said to be, on another occasion, a necessary tribunal, which is again that in this one; it is for its supreme authority to moderate the law in favor of

the law itself, in pronouncing less rigorously than the law.

50 Again, it could happen that some citizen, in public affairs, might violate the rights of the people, & do crimes that the established magistrates would not know how or would not like to punish. But, in general, the legislative power cannot judge; & it can do so even less in this particular case, where it represents the interested party, which is the people. Therefore it can only be 'the accuser. But before whom will it accuse? Will it go abase itself before the tribunals of the law that are inferior to it, & besides composed of people who, being of the people like it, would be carried away by the authority of such a great accuser? No: it is necessary, in order to preserve the dignity of the people & the security of the particular, that the legislative part of the people accuse before the legislative part of the nobles; which has neither the same interests it does, nor the same passions.

51 This is the advantage that this government has over most of the ancient republics, where there was this abuse--that the people were, at the same time, both judge & accuser.

52 The executive power, as we have said, ought to take part in legislation by its faculty of preventing; without which it would soon be stripped of its prerogatives. But, if the legislative power takes part in execution, the executive power will be equally lost.

53 If the monarch took part in legislation by the faculty of establishing, there would be no more liberty. But, since he must nevertheless take part in legislation, in order to defend himself, he must take part in it by the faculty of preventing.

54 The cause of the government's changing in Rome was that the senate, which had one part of the executive power, & the magistrates who had the other, did not have, like the people, the faculty of preventing.

55 Here, then, is the fundamental constitution of the government of which we are speaking. The legislative body being composed of two parties there, the one will enchain the other by their mutual faculty of preventing. Both will be bound by the executive power, which itself will be bound by the legislative.

56 These three powers would have to form a repose or an inaction. But since, by the necessary movement of things, they are constrained to go, they are forced to go in concert.

57 The executive power being part of the legislative only by its faculty of preventing, it would not know how to enter into the debate of affairs. It is not even necessary for it to propose; because, always being able to disapprove resolutions, it can reject the decisions on propositions that it would have wanted not to have been taken.

58 In some ancient republics, where the people in a body had the debate of affairs, it was natural for the executive

power to propose & debate with them; without which there would have been a strange confusion in their resolutions.

59 If the executive power establishes with respect to the raising of public revenues otherwise than by its consent, there will be no more liberty; because it will become legislative, in the most important point of legislation.

60 If the legislative power establishes, not from year to year, but forever, with respect to the raising of public revenues, it runs the risk of losing its liberty; because the executive power will not depend on it anymore; &, when one holds such a right forever, it is quite indifferent whether one holds it from oneself or from another. It is the same if the legislative power establishes not from year to year, but forever, with respect to the forces of land & of sea that it ought to entrust to the executive power.

61 In order for him who executes not to be able to oppress, the armies one entrusts to him must be of the people, & have the same spirit as the people, as it was in Rome until the time of Marius. And, in order for it to be thus, there are only two means; either those one employs in the army must have enough goods to answer for their conduct to the other citizens, & they must be enlisted only for one year, as was the practice in Rome; or, if one has a permanent body of troops, where the soldiers are one of the vilest parts of the nation, the legislative power must be able to dissolve it as soon as it desires it; the soldiers must live with the citizens; & there must be neither a

separate camp, nor barracks, nor fortress.

62 The army being once established, it ought not to depend immediately on the legislative body, but on the executive power, & that by 'the nature of the thing: its fact consisting more in action than in deliberation.

63 It is in the manner of thinking of men that one values courage more highly than timidity, activity more than prudence, force more than counsels. The army will always contemn a senate & respect its officers. It will not value highly orders that are sent to it by a body composed of people that it believes to be timid, & thereby unworthy of commanding it. Thus, as soon as the army depends solely on the legislative body, the government will become military. And, if the contrary has ever happened, it is the effect of some extraordinary circumstance: it is because the army is always separated there; it is because it is composed of several bodies which depend each one on its particular province; it is because the capital cities are excellent places that defend themselves by their situation alone, & where there are no troops.

64 Holland is still more secure than Venice: it would submerge revolting troops, it would make them die of hunger: They are not in the towns that could give them sustenance; so this sustenance is precarious.

65 If, in the case where the army is governed by the legislative body, particular circumstances prevent the government from becoming military, one will fall into other

inconveniences: one of two things; either the army will have to destroy the government, or the government will have to weaken the army.

66 And this weakening will have a very fatal cause; it will be born from the very weakness of the government.

67 If one wants to read the admirable work of Tacitus on the mores¹⁰ of the Germans, one will see that it is from them that the English drew the idea of their political government. This beautiful system was found in the woods.

68 Since all human things have an end, the state of which we are speaking will lose its liberty, it will perish. Rome, Lacedaemonia, & Carthage certainly perished. It will perish, when the legislative power is more corrupt than the executive.

69 It is not for me to examine whether the English presently enjoy this liberty or not. It suffices for me to say that it is established by their laws, & I do not look for it further.

70 I do not pretend by this to run down other governments, nor to say that this extreme political liberty ought to mortify those who have only a moderate liberty. How should I say that, I who believe that the excess even of reason is not always desirable; & that men almost always accommodate themselves better to middles than to extremes?

71 Harrington, in his Oceana, has also examined what was the highest point to which the constitution of a state could be carried. But one can say of him that he only looked for

this liberty after having failed to recognize it; & that he built Chalcedon, having the shore of Byzantium before his eyes.

Chapter 7. Of the monarchies with which we are acquainted.

1 THE monarchies with which we are acquainted do not have liberty for their direct object, like the one of which we have just spoken; they tend only to the glory of the citizens, of the state, & of the prince. But, from this glory, there results a spirit of liberty that, in these states, can do things as great & perhaps contribute as much to happiness as liberty itself.

2 The three powers are not distributed there & founded on the model of the constitution of which we have spoken; they have, each of them, a particular distribution, according to which they approach political liberty more or less: &, if they did not approach it, the monarchy would degenerate into despotism.

Chapter 8. Why the ancients did not have a very clear idea of monarchy.

1 THE ancients were not acquainted with government founded on a body of nobility, & less still with government founded on a legislative body formed by the representatives

of a nation. The republics of Greece & of Italy were towns each one of which had its government & assembled its citizens within its walls. Before the Romans had engulfed all the republics, almost nowhere was there a king, in Italy, Gaul, Spain, Germany; all that was little peoples or little republics. Even Africa was submitted to a great republic: Asia Minor was occupied by Greek colonies. So there was no example of deputies of towns, nor of assemblies of states; it was not necessary to go as far as Persia to find the government of one alone.

2 It is true that there were federative republics; several towns sent deputies to one assembly. But I say that there was no monarchy on that model.

3 Here is how the first plan of the monarchies with which we are acquainted was formed. The Germanic nations, which conquered the Roman empire, were, as one knows, very free. On this one has only to see Tacitus on the mores of the Germans. The conquerors spread out in the country; they lived in the countrysides, & little in the towns. When they were in Germany, the whole nation could be assembled. When they were dispersed in conquest, they were no longer able to do so. Nonetheless it was necessary for the nation to deliberate about its affairs, as it had done before the conquest: it did it by representatives. There is the origin of the Gothic government among us. It was at first mixed of aristocracy & of monarchy. It had this inconvenience, that the common people were slaves there: it

was a good government that had in itself the capacity to become better. The custom came of according letters of enfranchisement; & soon the civil liberty of the people, the prerogatives of the nobility & of the clergy, & the power of the kings were found in such a concert that I do not believe that there has been a government on Earth so well tempered as was this one in the time that it subsisted there; & it is admirable that the corruption of the government of a conquering people had formed the best type of government that men could imagine.

Chapter 9. Way of thinking of Aristotle.

1 THE perplexity of Aristotle appears visibly when he treats of monarchy.¹¹ He establishes five types of it: he does not distinguish them by the form of the constitution, but by accidental things, such as the virtues or the vices of the prince; or by extraneous things, such as the usurpation of tyranny or the succession to tyranny.

2 Aristotle puts both the empire of the Persians & the kingdom of Lacedaemonia in the ranks of monarchies. But who does not see that one was a despotic state, & the other a republic?

3 The ancients, who were unacquainted with the distribution of the three powers in the government of one alone, could not make themselves a just idea of monarchy.

Chapter 10. Way of thinking of the other politicians.

1 TO temper the government of one alone, Arribas,¹² king of Epirus, imagined only a republic. The Molossians, not knowing how to limit the same power, made two kings:¹³ in that way one weakened the state more than command did; one wanted rivals, & one had enemies.

2 Two kings were tolerable only at Lacedaemonia; they did not form the constitution there, but they were a part of the constitution.

Chapter 11. Of kings of the heroic times, among the Greeks.

1 AMONG the Greeks, in the heroic times, there was established a type of monarchy that did not subsist.¹⁴ Those who had invented the arts, made war for the people, assembled dispersed men, or who had given them lands, obtained the kingdom for themselves, & transmitted it to their children. They were kings, priests, & judges. This is one of the five types of monarchy about which Aristotle speaks to us;¹⁵ & it is the only one that can evoke the idea of the monarchic constitution. But the plan of this constitution is opposed to that of our monarchies today.

2 The three powers were distributed there in such a

manner that the people had the legislative power there;¹⁶ & the king, the executive power, with the power to judge: Whereas, in the monarchies with which we are acquainted, the prince has the executive power & the legislative, or at least a part of the legislative; but he does not judge.

3 In the government of the kings of heroic times, the three powers were badly distributed. These monarchies could not subsist: because, as soon as the people had legislation, they could, at the least caprice, annihilate royalty, as they did everywhere.

4 Among a free people, & one which has the legislative power, among a people confined in a city, where everything odious becomes still more odious, the masterpiece of legislation is to know how to place well the power to judge. But it could not be more badly placed than in the hands of him who already had the executive power. From that moment, the monarch became terrible. But at the same time, since he did not have legislation, he could not defend himself against legislation; he had too much power, & he did not have enough of it.

5 One had not yet discovered that the true function of the prince was to establish judges, & not to judge himself. The opposite policy made the government of one alone unbearable. All the kings were driven out. The Greeks did not imagine the true distribution of the three powers in the government of one alone; they imagined it only in the government of several, & they called this sort of

constitution polity.¹⁷

Chapter 12. Of the government of the kings of Rome, &
how the three powers were distributed there.

1 THE government of the kings of Rome had some relation to that of the kings of the heroic times among the Greeks. It fell, like the others, by its general vice; though in itself, & in its particular nature, it was very good.

2 To make known this government, I shall distinguish that of the first five kings, that of Servius Tullius, & that of Tarquin.

3 The crown was elective: &, under the first five kings, the senate had the greatest part in the election.

4 After the death of the king, the senate examined whether the form of government that was established would be kept. If it judged it appropriate to keep it, it named a magistrate,¹⁸ drawn from its body, who elected a king: the senate had to approve the election; the people had to confirm it; the auspices had to guarantee it. If one of these three conditions was lacking, it was necessary to make another election.

5 The constitution was monarchic, aristocratic, & popular; & such was the harmony of power that one saw neither jealousy nor dispute in the first reigns. The king commanded the armies, & had stewardship over the sacrifices; he had the power to judge civil¹⁹ and criminal²⁰ affairs; he

he convened the senate; he assembled the people; he brought certain affairs to them, & regulated others with the senate.²¹

6 The senate had a great authority. The kings often took senators to judge with them; they did not bring affairs to the people that the senators had not deliberated²² in the senate.

7 The people had the right to elect²³ the magistrates, to consent to new laws, &, when the king permitted it, that of declaring war & of making peace. They did not have the power to judge. When Tullus Hostilius referred the judgment of Horace to the people, he had particular reasons, which one finds in Dionysius of Halicarnassus.²⁴

8 The constitution changed under²⁵ Servius Tullius. The senate had no part in his election; he had himself proclaimed by the people. He divested himself of civil judgments,²⁶ & only reserved to himself the criminal ones; he brought all affairs directly to the people: he relieved them of taxes, & put the whole burden of them on the patricians. Thus, to the degree that he weakened royal power & the authority of the senate, he increased the power of the people.²⁷

9 Tarquin had himself elected neither by the senate nor by the people; he regarded Servius Tullius as a usurper, & took the crown as a hereditary right; he exterminated most of the senators; those who remained he did not consult anymore, & did not even call them to the judgments.²⁸ His

power grew: but what was odious in that power became yet more odious: he usurped the power of the people; he made laws without them; he even made some against them.²⁹ He would have united the three powers in his person: but the people remembered one moment that they were legislator, & Tarquin was no more.

Chapter 13. General reflections on the state of Rome,
after the expulsion of the kings.

1 ONE can never leave the Romans: thus it is that even today, in their capital, one leaves the new palaces to go look for ruins; thus it is that the eye which has rested on the luster of the prairies loves to see the rocks & the mountains.

2 In all times, the patrician families had had great prerogatives. These distinctions, great under the kings, became much more important after their expulsion. That caused the jealousy of the plebeians, who wanted to diminish them. The contests struck at the constitution, without weakening the government; because, provided that the magistrates kept their authority, it was quite indifferent from which family the magistrates were.

3 An elective monarchy, as Rome was, necessarily supposes a powerful aristocratic body which sustains it; without which, it is changed at first sight into a tyranny or into a

popular state. But a popular state does not need this distinction of families to maintain itself. Thus it was that the patricians, who were necessary parts of the constitution in the time of the kings, became a superfluous part of it in the time of the consuls; the people could diminish them without destroying themselves, & change the constitution without corrupting it.

4 When Servius Tullius had debased the patricians, Rome had to fall, from the hands of the kings, into those of the people. But the people, in diminishing the patricians, did not have to fear falling back into those of the kings.

5 A state can change in two ways; either because the constitution is corrected, or because it is corrupted. If it has kept its principles, & the constitution changes, it is being corrected: if it has lost its principles, when the constitution comes to change, it is being corrupted.

6 Rome, after the expulsion of the kings, should have been a democracy. The people already had the legislative power: it was their unanimous suffrage which had driven out the kings; &, if they did not persist in that will, the Tarquins could, at every moment, return. To claim that they had wanted to drive them out, to fall into the slavery of some families, that was not reasonable. The situation of things therefore demanded that Rome be a democracy; & nonetheless it was not. It was necessary to temper the power of the principals, & for the laws to incline towards democracy.

7 Often states flourish more in the unconscious passage from one constitution to another, than they do in one or the other of these constitutions. It is then that all the springs of the government are stretched; that all the citizens have pretensions; that one is attacked, or that one is caressed; & that there is a noble emulation between those who defend the constitution which is declining, & those who put forward the one which is prevailing.

Chapter 14. How the distribution of the three powers began to change, after the expulsion of the kings.

1 FOUR things principally shocked the liberty of Rome. The patricians obtained alone all the sacred, political, civil, & military posts; one had attached an exorbitant power to the consulate; one did outrages to the people; finally, one left them almost no influence in the suffrages. These were the four abuses that the people corrected.

2 1^o. They established that there would be magistracies to which the plebeians could pretend; & they obtained, bit by bit, that they would have a part in all, except that of inter-king.

3 2^o. One split up the consulate, & one formed several magistrates from it. One created pretors,³⁰ to whom one gave the power to judge private affairs; one named questors,³¹ to have public crimes judged; one established ediles, to whom one gave the police; one made treasurers,³²

who had the administration of the public funds; finally, by the creation of the censors, one took away from the consuls that part of the legislative power which regulates the mores of the citizens, & the momentary police of the various bodies of the state. The principal prerogatives that remained to them were to preside at the great³³ estates of the people, to assemble the senate, & to command the armies.

4 3º. The sacred laws established the tribunes, who could, at every instant, stop the enterprises of the patricians; & did not only prevent particular injuries, but also general ones.

5 Finally the plebeians increased their influence in public decisions. The Roman people were divided in three ways, by centuries, by curiae, & by tribes: &, when they gave their suffrage, they were assembled & formed in one of these three ways.

6 In the first, the patricians, the principals, the rich people, the senate, which was approximately the same thing, had almost all authority; in the second, they had less of it; in the third, still less.

7 The division by centuries was rather a division of census & of means, than a division of persons. All the people were divided into one hundred ninety-three centuries,³⁴ each of which had one vote. The patricians & the principals formed the first ninety-eight centuries; the rest of the citizens were distributed into the ninety-five

others. The patricians were therefore, in this division, the masters of the suffrages.

8 In the division by curiae,³⁵ the patricians did not have the same advantages. They had some nonetheless. It was necessary to consult the auspices, of which the patricians were the masters; one could not make a proposition to the people there, which had not been carried to the senate in advance, & approved by a senatus-consultum. But, in the division by tribes, it was neither a matter of auspices, nor of senatus-consultum, & the patricians were not admitted there.

9 But the people always sought to do by curiae the assemblies that were customarily done by centuries; & to do by tribes the assemblies that were done by curiae; which made affairs pass, from the hands of the patricians, into those of the plebeians.

10 Thus, when the plebeians had obtained the right of judging the patricians, which began during the affair of Coriolanus,³⁶ the plebeians wanted to judge them assembled by tribes,³⁷ and not by centuries: &, when one established in favor of the people the new magistracies³⁸ of tribunes & of ediles, the people obtained that they would assemble themselves by curiae to name them; &, when their power was confirmed, they obtained³⁹ that they would be named in an assembly by tribes.

Chapter 15. How, in the flourishing state of the republic,
Rome suddenly lost its liberty.

1 IN the fire of the disputes between the patricians & the plebeians, the latter demanded that one give fixed laws, in order for judgments to be no longer the effect of a capricious will, or of an arbitrary power. After much resistance, the senate acquiesced to it. To compose these laws, the decemvirs were named. It was thought that one should accord them a great power, because they had to give laws to parties that were almost incompatible. One suspended the nomination of all the magistrates; &, in the comitia, they alone were elected administrators of the republic. They found themselves invested with the consular power & with the power of the tribunes. The one gave them the right of assembling the senate; the other, that of assembling the people: but they convoked neither the senate nor the people. Ten men, in the republic, alone had all the legislative power, all the executive power, all the power of judgments. Rome saw itself submitted to a tyranny as cruel as that of Tarquin. When Tarquin practiced his vexations, Rome was indignant with the power which he had usurped: when the decemvirs practiced theirs, she was astonished at the power which she had given.

2 But what was this system of tyranny, produced by people who had only obtained political & military power by acquaintance with civil affairs; & who, in the circumstances

of those times, needed the cowardice of the citizens within, in order for them to let themselves be governed, & their courage without, to defend them?

3 The spectacle of the death of Virginia, immolated by her father in modesty & in liberty, made the power of the decemvirs vanish. Each one found himself free, because each one was offended: everyone became a citizen, because everyone found himself a father. The senate & the people returned into a liberty which had been entrusted to ridiculous tyrants.

4 The Roman people, more than another, was moved by spectacles. That of the bloody body of Lucretia put an end to royalty. The debtor, who appeared in the place covered with wounds, made the form of the republic change. The sight of Virginia drove out the decemvirs. To have Manlius condemned, it was necessary to take the sight of the capitol away from the people. The bloody robe of Caesar put Rome back into servitude.

Chapter 16. Of the legislative power, in the Roman republic.

1 ONE had no rights to dispute under the decemvirs: but, when liberty returned, one saw the jealousies being born again: so much as there remained some privileges to the patricians, the plebeians took them away from them.

2 There would have been little harm, if the plebeians had

contented themselves with depriving the patricians of their prerogatives, & if they had not offended them in their very quality as citizens. When the people were assembled by curiae or by centuries, they were composed of senators, of patricians, & of plebeians. In the disputes, the plebeians won this point,⁴⁰ that alone, without the patricians & without the senate, they could make laws which one called plebiscites; & the comitia where they were made were called comitia by tribes.⁴¹ Thus there were cases where the patricians⁴¹ had no part in the legislative power, &⁴² where they were submitted to the legislative power of another body of the state. This was a delirium of liberty. The people, to establish democracy, shocked the very principles of democracy. It seemed that such an exorbitant power would have had to annihilate the authority of the senate: but Rome had admirable institutions. She had two of them especially; by one, the legislative power of the people was regulated; by the other, it was confined.

3 The censors, & before them the consuls,⁴³ formed & created, so to speak, every five years, the body of the people; they practiced legislation on the very body which had the legislative power. "Tiberius Gracchus, censor," said Cicero, "transferred the freedmen into the tribes of the town, not by the force of his eloquence, but by a word & by a gesture: &, if he had not done it, this republic, which today we hardly sustain, we should not have it anymore."

4 On the other side, the senate had the power, so to speak, to take away the republic from the hands of the people, by the creation of a dictator, before whom the sovereign lowered its head, & the most popular laws remained in silence.⁴⁴

Chapter 17. Of the executive power, in the same republic.

1 IF the people were jealous of the legislative power, they were less so of the executive power. They left it almost completely to the senate & to the consuls; & they reserved to themselves little but the right to elect the magistrates, & to confirm the acts of the senate & of the generals.

2 Rome, whose passion was to command, whose ambition was to submit everything, which had always usurped, which was still usurping, continually had great affairs; her enemies conspired against her, or she conspired against her enemies.

3 Obliged to conduct herself, on one side, with a heroic courage, & on the other with a consummate wisdom, the state of things demanded that the senate should have the direction of affairs. The people disputed all the branches of the legislative power with the senate, because they were jealous of their liberty; they did not dispute the branches of the executive power with it, because they were jealous of their

glory.

4 The part which the senate took in the executive power was so great, that Polybius⁴⁵ says that foreigners all thought that Rome was an aristocracy. The senate disposed of public funds, & farmed out the revenues; it was the arbiter of the affairs of the allies; it decided on war & on peace, & directed the consuls in this regard; it fixed the number of Roman troops & of allied troops, distributed provinces & armies to the consuls or to the pretors; &, when the year of their command expired, it could give them a successor; it decreed triumphs; it received embassies, & sent them; it named kings, rewarded them, punished them, judged them, gave them or made them lose the title of allies of the Roman people.

5 The consuls made the levy of troops which they had to lead to war; they commanded the armies of land or of sea; made the disposition of the allies: they had, in the provinces, all the power of the republic: they gave peace to conquered peoples, imposed the conditions of it on them, or referred them to the senate.

6 In the first times, when the people took some part in the affairs of war & of peace, they exercised rather their legislative power than their executive power. They did little but confirm what the kings, &, after them, the consuls or the senate had done. Very far from the people being the arbiter of war, we see that the consuls or the senate often made it in spite of the opposition of their

tribunes. Thus⁴⁶ they created the tribunes of the legions themselves, which the generals had named up till then: &, some time before the first Punic War, they ruled that they alone would have the right to declare war.⁴⁷

Chapter 18. Of the power to judge, in the government of Rome.

1 THE power to judge was given to the people, to the senate, to the magistrates, to certain judges. It is necessary to see how it was distributed. I begin with civil affairs.

2 The consuls⁴⁸ judged after the kings, as the pretors judged after the consuls. Servius Tullius had stripped himself of the judgment of civil affairs: the consuls did not judge them either, except in very⁴⁹ rare cases, which one called, for that reason, extraordinary.⁵⁰ They contented themselves with naming the judges, & with forming the tribunals that were to judge. It appears, by the discourse of Appius Claudius in Dionysius of Halicarnassus,⁵¹ that, from the year of Rome 259, this was regarded as an established custom among the Romans; & it does not make it go back very far, to ascribe it to Servius Tullius.

3 Each year, the pretor formed a list⁵² or panel of whom he chose to perform the function of judges during the year of his magistracy. One took the number of them that was

sufficient for each affair. That is practiced approximately the same in England. And what was very favorable to⁵³ liberty, was that the pretor took the judges from the consent⁵⁴ of the parties. The great number of challenges that one can make today in England, goes back approximately to this usage.

4 These judges only decided questions of fact:⁵⁵ for example, if a sum had been paid, or not; if an action had been committed, or not. But, as to the questions of right,⁵⁶ since they demanded a certain capacity, they were carried to the tribunal of the centumvirs.⁵⁷

5 The kings reserved to themselves the judgment of criminal affairs, & the consuls succeeded them in that. It was in consequence of that authority, that the consul Brutus had his children & all those who had conspired for the Tarquins killed. This power was exorbitant. The consuls already having military power, they carried the exercise of it even into the affairs of the city; & their trials, stripped of the forms of justice, were violent actions, rather than judgments.

6 Because of that the Valerian law was made, which allowed an appeal to the people from all the ordinances of the consuls that put the life of a citizen in peril. The consuls were no longer able to pronounce capital punishment against a Roman citizen, except by the will of the people.⁵⁸

7 One sees, in the first conspiracy for the return of the

Tarquins, that the consul Brutus judged the guilty; in the second, one assembled the senate & the comitia to judge.⁵⁹

8 The laws that one called sacred gave the plebeians tribunes, who formed a body which had immense pretensions at first. One does not know which was greater, the shameful impudence of demanding among the plebeians, or the condescension & the ease of conceding in the senate. The Valerian law had permitted appeals to the people; that is to say, to the people composed of senators, of patricians, & of plebeians. The plebeians established that it would be before them that the appeals would be carried. Soon one put in question whether the plebeians could judge a patrician: that was the subject of a dispute, to which the affair of Coriolanus gave birth, & which finished with that affair. Coriolanus, accused by the tribunes before the people, held, against the spirit of the Valerian law, that being a patrician, he could only be judged by the consuls: the plebeians, against the spirit of the same law, claimed that he must be judged only by them alone; & they judged him.

9 The law of the twelve tables modified this. It ordered that one could only decide on the life of a citizen in the great estates of the people.⁶⁰ Thus, the body of plebeians, or, which is the same thing, the comitia by tribes no longer judged any but crimes whose punishment was only a pecuniary fine. A law was necessary to inflict capital punishment: for condemnation to a pecuniary punishment, only a plebiscite was necessary.

10 This arrangement of the law of the twelve tables was very wise. It formed an admirable conciliation between the body of the plebeians & the senate. Because, since the competence of the ones & of the others depended on the greatness of the punishment, & on the nature of the crime, it was necessary that they should concert themselves together.

11 The Valerian law removed all that remained in Rome of the government that had a relation to that of the Greek kings of the heroic times. The consuls found themselves without power for the punishment of crimes. Though all crimes are public, it is nonetheless necessary to distinguish those which are more interesting to the citizens among themselves, from those which are more interesting to the state in the relation which it has with a citizen. The first are called private; the second are public crimes. The people judged public crimes themselves; &, in regard to private, they named, for each crime, by a particular commission, a questor, to make the prosecution of it. It was often one of the magistrates, sometimes a private man, whom the people chose. One called him questor of the parricide. Mention is made of this in the law of the twelve tables.⁶¹

12 The questor named what one called the judge of the interrogation, who drew the judges by lot, formed the tribunal, & presided under him at the judgment.⁶²

13 It is good to point out here the part that the senate

took in the nomination of the questor, in order for one to see how the powers were, in this regard, balanced. Sometimes the senate had a dictator elected, to perform the function of questor;⁶³ sometimes it ordered that the people be convoked by a tribune, so that they could name a questor;⁶⁴ finally, the people sometimes named a magistrate, to make his report to the senate on a certain crime, & to ask them to provide a questor, as one sees in the judgment of Lucius Scipio,⁶⁵ in Titus Livy.⁶⁶

14 In the year of Rome 604, some of these commissions were made permanent.⁶⁷ Bit by bit, one divided all criminal matters into various parts, which one called perpetual questions. One created various pretors, & one assigned to each one of them some one of these questions. One gave them, for a year, the power to judge the crimes which belonged to it; & then, they would go govern their province.

15 In Carthage, the senate of the hundred was composed of judges who were for life.⁶⁸ But, in Rome, the pretors were annual; & the judges were not even for a year, since one took them for each affair. One saw, in chapter VI of this book, how much, in certain governments, this disposition was favorable to liberty.

16 Judges were taken from the order of senators, until the time of the Gracchi. Tiberius Gracchus made an order that one take them from that of the knights: a change so considerable, that the tribune boasted that he had, by a

sole rogation, cut the nerves of the order of senators.

17 It is necessary to notice that the three powers can be well distributed by relation to the liberty of the constitution, though they are not so well distributed in the relation with the liberty of the citizen. In Rome, the people having the greatest part of the legislative power, a part of the executive power, & a part of the power to judge, this was a great power which it was necessary to balance by another. The senate did have a part of the executive power; it had some branch of the legislative power:⁶⁹ but that was not sufficient to counterbalance the people. It was necessary for it to have a part in the power to judge; & it did have a part in it, when the judges were chosen from among the senators. When the Gracchi deprived the senators of the power to judge,⁷⁰ the senate was no longer able to resist the people. So they shocked the liberty of the constitution, to favor the liberty of the citizen; but the latter was lost with the former.

18 Infinite evils resulted from this. One changed the constitution at a time when, in the fire of civil discords, there barely was a constitution. The knights were no longer that middle order that united the people to the senate; & the chain of the constitution was broken.

19 There were even particular reasons which ought to have prevented the transfer of judgments to the knights. The constitution of Rome was founded on this principle, that those ought to be soldiers, who had enough goods to be

responsible to the republic for their conduct. The knights, as those who were richest, formed the cavalry of the legions. When their dignity was increased, they no longer wanted to serve in this militia; it was necessary to raise another cavalry; Marius took every sort of people into the legions, & the republic was lost.⁷¹

20 Moreover: the knights were the tax-farmers of the republic; they were greedy, they sowed misfortunes within misfortunes, & gave birth to public needs out of public needs. Very far from giving such people the power to judge, it would have been necessary for them to have been incessantly under the eyes of the judges. It is necessary to say this in praise of the ancient French laws; they made stipulations, towards men of affairs, with the same mistrust that one keeps towards enemies. When judgments were transferred to the tax-farmers in Rome, there was no more virtue, no more police, no more laws, no more magistracy, no more magistrates.

21 One finds a very naive description of this, in some fragment of Diodorus of Sicily & of Dio. "Mutius Scaevola," says Diodorus,⁷² wanted to recall the old mores, & to live on his own goods with frugality & integrity. Because his predecessors had made a society with the tax-farmers, who then had the judgments in Rome, they had filled the province with all sorts of crimes. But Scaevola made justice for the publicans, & had led to prison those who had been dragging others there."

22 Dio tells us⁷³ that Publius Rutilius, his lieutenant, who was no less odious to the knights, was accused upon his return of having received presents, & was condemned to a fine. He surrendered the goods at once. His innocence appeared in that one found him to have much less than one had accused him of having stolen, & he showed the titles of his property; he did not want to stay in the city with such people.

23 The Italians, says Diodorus further,⁷⁴ bought troops of slaves in Sicily to work their fields, & to have care of their flocks; they refused them food. These unfortunates were obliged to go steal on the highways, armed with lances & with clubs, covered with animal skins; great dogs around them. The whole province was devastated, & the people of the country could only say that they had as their own what was within the walls of the towns. There was neither proconsul, nor pretor, who was able or willing to oppose this disorder, & who dared to punish these slaves, because they belonged to the knights who had the judgments⁷⁵ in Rome. I shall say only a word: a profession which neither has nor can have any object but gain; a profession which always demands, & from which one demands nothing; a deaf & inexorable profession, which impoverishes wealth & even misery, ought not to have had the judgments in Rome.

1 IT is thus that the three powers were distributed in the city: but they were far from being distributed the same in the provinces. Liberty was in the center, & tyranny in the extremities.

2 While Rome was dominant only in Italy, the people were governed as confederates: one followed the laws of each republic. But, when she conquered further, so that the senate did not have its eye immediately over the provinces, so that the magistrates who were in Rome were no longer able to govern the empire, it was necessary to send pretors & proconsuls. Then, this harmony of the three powers was no more. Those whom one sent had a power that united that of all the Roman magistrates; what am I saying? even that of the senate, even that of the people.⁷⁶ They were despotic magistrates, who were well adapted to the distance of the places to which they were sent. They exercised the three powers; they were, if I dare use this term, the pashas of the republic.

3 We said elsewhere⁷⁷ that the same citizens, in the republic, had, by the nature of things, civil & military posts. Therefore a republic which conquers can hardly communicate its government, & govern the conquered states according to the form of its constitution. In fact, the magistrate that it sends to govern, having the executive power, civil & military, it is very necessary that he also have the legislative power; because, who is there who would

make laws without him? It is also necessary that he have the power to judge; because, who is there who would judge independently of him? So it is necessary for the governor whom it sends to have the three powers, as it was in the Roman provinces.

4 A monarchy can more easily communicate its government, because the officers that it sends have, the ones, the civil executive power, & the others, the military executive power; which does not bring despotism in one's train.

5 It was a privilege of great consequence for a Roman citizen, to be able to be judged only by the people. Without that, he would have been submitted, in the provinces, to the arbitrary power of a proconsul or of a proprietor. The city did not feel the tyranny that was only exercised over subject nations.

6 Thus, in the Roman world, as at Lacedaemonia, those who were free were extremely free, & those who were slaves were extremely slave.

7 While the citizens were paying tributes, they were raised with a very great equity. One followed the establishment of Servius Tullius, who had distributed all of the citizens in six classes, according to the order of their wealth, & fixed the share of the tax in proportion to that which each one had in the government. It happened because of that that one suffered the greatness of the tribute, because of the greatness of the credit; & that one consoled oneself for the littleness of the credit, by the littleness

of the tribute.

8 There was another admirable thing: it was that the division of Servius Tullius by class being, so to speak, the fundamental principle of the constitution; it happened that equity, in the raising of tributes, kept to the fundamental principle of the government, & could only be removed along with it.

9 But, while the city paid the tributes without difficulty, or paid them not at all,⁷⁸ the provinces were devastated by the knights, who were the tax-farmers of the republic. We spoke of their vexations, & all of history is full of them.

10 "All Asia waits for me as its liberator," said Mithridates;⁷⁹ "so much have the pillages of the proconsuls,⁸⁰ the execution of the men of affairs, & the calumnies of the judgments⁸¹ excited hate against the Romans."

11 There is what made the force of the provinces add nothing to the force of the republic, & on the contrary only serve to weaken it. There is what made the provinces look on the loss of the liberty of Rome as the epoch of the establishment of their own.

Chapter 20. End of this book.

1 I should like to investigate, in all the moderate governments with which we are familiar, what is the

distribution of the three powers, & to calculate by that the degrees of liberty that each one of them can enjoy. But it is not always necessary to exhaust a subject so much, that one leaves nothing to the reader to do. It is not a matter of making him read, but of making him think.

Notes to Book II

1. I have, said Cicero, copied the edict of Scaevola, which permits the Greeks to terminate their differences among themselves, according to their laws: which makes them regard themselves as free peoples.

2. The Muscovites could not bear that Czar Peter made them cut it.

3. The Cappadocians refused the republican state, which the Romans offered them.

4. Natural object of a state that has no external enemies, or that believes it has stopped them by barriers.

5. Inconvenience of the liberum veto.

6. In Venice.

7. As in Athens.

8. These were magistrates that the people elected every year. See Stephen of Byzantium.

9. One could accuse the Roman magistrates after their magistracy. See, in Dionysius of Halicarnassus, bk. IX, the affair of the tribune Genutius.

10. De minoribus rebus principes consultant, de majoribus omnes: ita tamen ut ea quoque, quorum penes plebū arbitrium est, apud principes pertractentur.

11. Politics, bk. III. ch. xiv.

12. See Justin, bk. XVII.

13. Aristotle, Polit., bk. V, ch. ix.

14. Aristotle, Polit., bk. III, ch. xiv.

15. Ibid.

16. See what Plutarch says, life of Theseus. See also Thucydides, bk. I.

17. See Aristotle, Polit., bk. IV, ch. viii.

18. Dionysius of Halicarnassus, bk. II, p. 120; & bk. IV, pp. 242 & 243.

19. See the speech of Tanaquil, in Titius Livy, bk. I, decade I; & 1st rule of Servius Tullius, in Dionysius of Halicarnassus, bk. IV, p. 229.

20. See Dionysius of Halicarnassus, bk. II, p. 118; & bk. III, p. 171.

21. It was by a senatus-consultum that Tullius Hostilius sent to destroy Alba. Dionysius of Halicarnassus, bk. III, pp. 167 & 172.

22. Ibid. bk. IV, p. 276.

23. Ibid. bk. II. It was nonetheless necessary that they not name all the offices, since Valerius Publicola made the famous law which forbade every citizen from exercising any post, if he had not obtained it by the suffrage of the people.

24. Bk. III, p. 159.

25. Bk. IV.

26. He deprived himself of half of the royal power, says Dionysius of Halicarnassus, bk. IV, p. 229.

27. One believed that, if it had not been prevented by Tarquin, he would have established popular government. Dionysius of Halicarnassus, bk. IV, p. 243.

28. Dionysius of Halicarnassus, bk. IV.

29. Ibid.

30. Titius Livy, decade I, bk. VI.

31. Questores parricidii. Pomponius, leg. 2, §23, ff. de orig. jur.

32. Plutarch, life of Publicola.

33. Comitiis centuriatis.

34. See on this Titius Livy, bk. I; & Dionysius of Halicarnassus, bk. IV & VII.

35. Dionysius of Halicarnassus, bk. IX, p. 598.

36. Dionysius of Halicarnassus, bk. VII.

37. Against the old usage, as one sees it in Dionysius of Halicarnassus, bk. V, p. 320.

38. Bk. VI, p. 410 & 411.

39. Bk. IX, p. 605.

40. Dionysius of Halicarnassus, bk. XI, p. 725.

41. By the sacred laws, the plebeians could make plebiscites, alone, & without the patricians being admitted into their assembly. Dionysius of Halicarnassus, bk. VI, p. 410; & bk. VII, p. 430.

42. By the law made after the expulsion of the decemvirs, the patricians were submitted to the plebiscites, though they were not able to give their vote there. Titius Livy, bk. III; & Dionysius of Halicarnassus, bk. XI, p. 725. And this law was confirmed by that of Publilius Philo, dictator, in the year of Rome 416. Titius Livy, bk. VIII.

43. In the year 312 of Rome, the consuls still did the census, as it appears by Dionysius of Halicarnassus, bk. XI.

44. Such as those which permitted the ordinances of all magistrates to be appealed to the people.

45. Bk. VI.

46. In the year of Rome 444. Titius Livy, first decade, bk. IX. The war against Perseus appearing perilous, a senatus-consultum ordered that that law should be suspended: & the people consented to it. Titius Livy, fifth decade, bk. II.

47. They tore it away from the senate, says Freinsheimius, second decade, bk. VI.

48. One cannot doubt that the consuls, before the creation of the pretors, had had the civil judgments. See Titius Livy, first decade, bk. II, p. 19; Dionysius of Halicarnassus, bk. X, p. 627; & same bk., p. 645.

49. Often the tribunes judged alone: nothing made them more odious. Dionysius of Halicarnassus, bk. XI, p. 709.

50. Judicia extraordinaria. See the institutes, bk. IV.

51. Bk. VI, p. 360.

52. Album judicium.

53. Our ancestors did not want, said Cicero, pro Cluentio, for a man, on whom the parties were not agreed, to be able to judge, not only of the reputation of a citizen, but even of the least pecuniary affair.

54. See, in the fragments of the Servilian law, of the Cornelian, & others, in what manner these laws gave judges in the crimes that they proposed to punish. Often they were taken by choice, sometimes by lot, or finally by lot mixed with choice.

55. Seneca, de benef. bk. III, chap. VII, in fine.

56. See Quintilian, bk. IV, p. 54, in-fol. edit. of Paris, 1541.

57. Leg. 2, §.24 ff de orig. jur. Magistrates, called decemvirs, presided at the judgment, all under the direction of a pretor.

58. Quoniam de capite civis romani, injussu populi romani, non erat permisum consulibus jus dicere. See Pomponius, leg. 2, §.16, ff. de orig. jur.

59. Dionysius of Halicarnassus, bk. V, p. 322.

60. The comitia by centuries. Manlius Capitolinus was also judged in these comitia. Titius Livy, first decade, bk. VI, p. 68.

61. Says Pomponius, in law 2, in the digest de orig. jur.

62. See a fragment of Ulpian, which reports another from the Cornelian law: it is found in the collation of Mosaic & Roman laws, titul. I, de sicariis & homicidiis.

63. That took place especially in the crimes committed in Italy, where the senate had principal superintendence. See Titius Livy, first decade, bk. IX, on the conspiracies of Capua.

64. That was such in the prosecution of the death of Posthumius, in the year 340 of Rome. See Titius Livy.

65. This judgment was given in the year of Rome 567.

66. Bk. VIII.

67. Cicero, in Bruto.

68. That is proven by Titius Livy, bk. XLIII, which says that Hannibal made their magistracy annual.

69. The senatus-consulta had force during one year, though they were not confirmed by the people. Dionysius of Halicarnassus, bk. IX, p. 595; and bk. XI, p. 735.

70. In the year 630.

71. Capite censos plerosque. Sallust, war of Jugurtha.

72. Fragment of this author, bk. XXXVI, in the collection of Constantine Porphyrogenetus, of the virtues & of the vices.

73. Fragment of his history, drawn from the extract of the virtues & of the vices.

74. Fragment of bk. XXXIV, in extract of the virtues & of the vices.

75. Penès quos Romae tūm judicia erant, atque ex equestri ordine solerent sortitò judices eligi in caussâ praetorum & proconsulum. quibus, post administratum provincium, dies dicta erat.

76. They made their edicts upon entering the provinces.

77. Bk. V, ch. XIX. See also bks. II, III, IV, & V.

78. After the conquest of Macedonia, tributes ceased in Rome.

79. Harangue drawn from Trogus Pompey, reported by Justin, b. XXXVIII.

80. See the orations against Verres.

81. One knows that it was the tribunal of Varus that made the Germans revolt.